

**Gour Chandra Vs. the State**

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**Court :** Orissa

**Decided On :** May-03-1989

**Reported in :** 1989CriLJ1667

**Judge :** D.P. Mohapatra and ;A.K. Padhi, JJ.

**Appellant :** Gour Chandra

**Respondent :** The State

**Judgement :**

**D.P. Mohapatra, J.**

1. The accused in Sessions Case No. 32 of 1983 of the court of the Additional Sessions Judge, Koraput has filed this appeal challenging the judgment of the court convicting him under Section 302, Penal Code and sentencing him to undergo rigorous imprisonment for life. The allegation against the appellant was that on the night of 3rd April, 1983 at about 2 a.m. he committed the murder of two persons, viz. Laxman Chikimia and Sukra Marichapulua by intentionally causing their death by means of an axe.

2. The prosecution case as disclosed from the F.I.R. (Ext 1/1) lodged by Jagannath Chikimia (P.W. 1) is that about twenty days prior to the occurrence the accused was moving like a vagabond in drunken state. On 2-4-83 at about 3 p.m. he was drunk and after creating some trouble in the house he was going towards

Goudeguda His son Reghunath Chikimia and Nidhi Gouda brought him to the house. The accused was making them to leave him so that he would go away wherever he pleased. The mother of the accused apprehending that he may create trouble requested deceased Laxman to sleep with the accused during the night. Laxman and the other deceased Sukra came to the house of the accused after taking their night meal and both of them slept with the accused guarding him. The informant left for his house after warning both the deceased persons to be careful while guarding the accused. At that time the accused was threatening that he would see deceased Laxman.

Late in the night, at about cock-crow time the informant having heard the cry 'MARI DALF (I am dying) in the house of the accused came there, knocked at the door and called out to open the door, but the door was not opened. The accused and both the deceased persons were sleeping together on the varandah of the house of the former enclosed by Jafry and covered with a Tali having some holes. The electric light was burning inside the enclosed premises. The informant focusing his torch through the hole saw that the deceased Sukra was lying with a cut injury on his neck with blood oozing cut and Laxman could not be seen. The accused was standing near Sukra holding the axe. The informant asked the accused to open the door, but he put off the light. Thereafter the mother of the accused and some villagers, viz., Bhagaban Naik (P. W. 4), Anama Charan Bisoi (P. W. 2), Laxman Borik, Shyam Halwa, Loku Pujari and others came there. Anama Charan Bisoi focused his torch through the hole and found that Sukra was lying flat in a pool of blood, his neck having been cut and the accused was standing in one corner. Apprehending that the accused may run away all the persons gathered there guarded a portion of the house and the ward member of Goudaguda, Chaitan Gouda (P. W. 3) was called. When Chaitan reached the spot, he focused his torch through the hole and saw the same thing. The informant accompanied by Bhagaban Naik (P. W. 4), Anam Charan Bisoi (P. W. 2) and Laxman Barik came to the Police Station and reported the occurrence to the police which was reduced into writing (Ext. 1/1).

The Officer-in-charge of the Police Station along with his staff came to the house of the accused. The informant and P. W. 3 accompanied him. On his arrival the

Officer-in-charge found that door of the house of the accused was still closed He asked the accused i to open the door. The accused opened the door and came out Immediately thereafter he was arrested and interrogated The accused stated that he had kept the axe (M.O.I.) concealed in the room in the space lying between two bamboo containers used for storing paddy, led the police officer and others to the place, brought out the axe and produced the same before the Officer-in-charge who seized it. All of them saw that both the deceased persons were lying dead in the room in pool of blood. Sukra had four cut injuries and Laxman had five; the head of Laxman was severed from the body and the neck of Sukra was cut and the head was about to be severed. The Officer-in-charge held inquest over the dead bodies, sent them to the Medical Officer, Boipariguda P.H.C. for post-mortem examination, seized bloodstained and sample earth from the spot under the seizure list (Ext. 14), seized the banian and the napkin (M.Os. II and III) stained with blood from the person of the accused under the seizure list (Ext. 1.5). To the query made by the Investigating Officer to the doctor as to whether the injuries on the deceased persons could be possible by the axe (M.O.I.), the reply of the latter was in the affirmative. He also sent M.Os. I, II and III and other seized articles to the Chemical Examiner at Rasulgarh and the reports (Exts. 20 and 20/1) were received. After completion of investigation he submitted charge-sheet against the accused under Section 302, I.P.C. As the case was exclusively triable by the Court of Session, it was committed to that Court and the accused stood his trial under the aforesaid section after pleading not guilty to the same.

3. The defence plea was one of denial of the complicity of the accused in the crime and also that the accused was of unsound mind at the relevant time.

4. The prosecution in order to bring home the charge against the accused examined in all eight witnesses of whom P. W. 8 was the Investigating Officer, P. W. 7 was the doctor who held post-mortem examination over the dead bodies of the deceased persons, P. W. 6 was the constable, who escorted the dead bodies to the doctor, P.W. 5 was the seizure witness who proved the seizure of M.Os. II and III from the person of the accused, P. W. 1 was the informant and P.Ws, 2, 3 and 4 were the post-occurrence witnesses who came to the house of the accused shortly after P. W. 1.

5. The defence in support of the plea of insanity of the accused examined three witnesses, the father, the mother and the son of the accused.
6. There is little scope to doubt that the deceased persons met homicidal death on the date of occurrence. The deceased Laxman was beheaded and he had five cut injuries. The head of deceased Sukra was almost severed and he had four cut injuries. All the injuries on these persons were ante-mortem in nature and their death was due to massive shock as a result of profuse bleeding causing permanent damage to the muscles, vessels and spinal cord as opined by the doctor (P. W. 7). The cut injuries on their persons were caused by heavy cutting weapon like M.O. I and those injuries were sufficient in the ordinary course of nature to cause death as evident from the uncontroverted evidence of the doctor and the post-mortem reports (Exts. 2 and 3). No attempt was made in this Court to assail the finding of the learned Sessions Judge that the deceased persons met homicidal death.
7. The next question for consideration is whether the accused was the author of the injuries found on the deceased persons which resulted in their death and whether the act was intentional. The prosecution relied mainly on the evidence of P. Ws. 1, 2, 3 and 4 to establish this aspect of the case. P. W. 1, the informant, stated in his evidence that one year and two months back on a Saturday the accused took Salap juice, picked up quarrel in his house and was going away from his house towards Goudaguda side in the evening time. Raghunath, the son of the accused and one Nidhi Gouda brought him to his house. After being brought there the accused was shouting to release him so that he would go out. They did not release him. The mother of the accused called the deceased persons. Laxman and Sukra and asked them to sleep in the room with the accused to watch him. Both of them came to the house of the accused after taking their night meal and slept there near him. The witness stated that he saw the accused and both the deceased persons sleeping in the house of the accused. The house of the witness and that of the accused were within the same boundary with a common court-yard. After the deceased persons and the accused slept, before leaving the house the witness asked the former to be careful. The witness further stated that at cock-crow time he heard screaming voice coming from the house of the accused. On

hearing it he came to the place where the accused and the deceased persons were sleeping. The door was closed from inside. Electric lights were burning in the room. Though he pushed the door it was not opened. The accused and the deceased persons were sleeping on the verandah of the house enclosed by a wooden Jafry and Tati (covering made of palm leaf). The witness peeped through a hole of the Tati and found that the throat of the deceased Sukra was cut and blood was oozing out. There was also a light burning on the verandah where the deceased and the accused were sleeping. The accused was standing near Sukra holding the axe (M.O.I.). There were three bamboo containers in the room. The accused and the deceased persons were sleeping in the space between the containers. When the witnesses raised alarm saying 'MARI DELA' (he killed) the accused put off the light. Thereafter villagers came. Anama Bisoi had a torch in his hand. Anama focused his torch through the hole and saw the deceased Sukra and the accused inside. The door was still closed. Others also saw this by torchlight. The ward member, Chaitan Gouda, who was called to the spot also saw the incident. On his advice the incident was reported to the police. When the Officer-in-charge on reaching the house asked the accused to open the door he opened it and came out. The police arrested him and found Laxman and Sukra lying dead with cut injuries and blood oozing out. The witness gave a detailed account of the different injuries found on the two deceased persons. The witness further stated that deceased Laxman was the son of his elder brother and deceased Sukra was a son of a relation of his. It is in his evidence that the accused used to take Salap juice day and night and move about in the village shouting. Sometimes he used to go out of the village. In cross-examination the witness stated that in the morning of the Saturday on which the occurrence took place the father of the accused went to village Charaka to call a Gunia to cure the accused. Before he returned to the house the occurrence took place. The witness denied the suggestion that the accused was mad twenty days prior to the occurrence. P.W. 2 Anam Charan Bisoi stated in his deposition that his house is four houses apart from the house of the accused. At about cock-crow time on the night the occurrence took place on hearing the alarm raised by P, W. 1 he came to the house of the accused. By then some of the villagers had already gathered there. He pushed the door of the house of the accused which was closed and found it to be locked. On focusing his torch

light through the hole in the Tati which covered the Jafry on the varandah the witness found that the deceased Sukra was lying dead with a cut injury on his throat and the accused was standing by the side of Sukra holding the axe. The witness could not see Laxman. The witness stated that other villagers also saw the incident. The ward member, Chaitan Gouda, of Goudaguda also saw the incident through the hole in the Tati by torch light. It is in the evidence of this witness that accused used to take Salap juice day and night and move about here and there shouting. Sometimes he used to go out of the village. He was not mad. He also stated that he found M.O.I. in the hand of the accused when he was standing by the side of Sukra inside the Jafry. In cross-examination the witness denied the suggestion that the accused was a mad man.

P.W. 3, Chaitana Gouda the ward member of villager Goudaguda has deposed, inter alia, that on reaching the spot he found that the door of the house of the accused was closed. It was still dark. He got the torch from P. W. 2 and focussed the torch through the hole on the Tati and found that Sukra was lying with a cut injury on his throat and blood was coming out. He could not see Laxman. The accused was standing near Sukra holding M.O.I. On arriving in the village the police officer asked the accused to open the door. The accused opened the door and the police arrested him. On interrogation the accused told the police that he had concealed the axe in the space between the bamboo containers and so saying he brought it out and handed over M.O.I. to the police officer and it was seized. The witness found that Sukra and Laxman were lying dead inside the room with bleeding cut injuries. According to the witness, the accused used to take Salap juice. He was not mad.

It appears from the evidence of P. W. 4 Bhagaban Naik, the Naik of the village, that at cock-crow time on the night of occurrence he heard a hulla in the village and came to the house of the accused By that time the villagers had already gathered near the house. The witness had torch in his hand On focusing through the holes of the Jafry he found that Sukra was lying with cut injury on his throat and blood was coming out The accused was standing near Sukra holding M.O.I. On being called by the villagers the ward member (P.W. 3) came there and saw the incident The witness further stated that the accused used to take Salap juice

day and night He was not a Baya (insane person). In cross-examination he denied the suggestion that the accused was a Baya.

P.W. 8, the Officer-in-charge, Chitrakunda Police Station who investigated into the case stated in his evidence that on recording the F.I.R. (Ext 1/1) at the Police Station he proceeded to the house of the accused at Masigam and reached there at about 1,30 am. On his arrival there he found that the door of the house of the accused was closed from inside. When he knocked at the door and called the accused giving his identity, the latter opened the door and came out He immediately arrested him and interrogated. During interrogation he told him that he had concealed the axe in the space between two bamboo containers used for storing paddy. The accused went inside followed by the police officer and others and brought out the blood-stained weapon (M.O.I.) from the space between the bamboo containers inside the room The witness found the dead bodies of Laxman and Sukra lying inside the room in a pool of blood, four cut injuries on the person of Sukra of which one cut injury was on the neck and the neck was almost severed, two cut injuries on the chest and one cut injury on the lower jaw. Similarly he found five cut injuries on the person of Laxman whose head was severed from the body.

8. As noticed earlier, the defence examined three witnesses. D. W. 1 is the son of the accused, O.W. 2 is his father and D. W. 3 is his mother. These witnesses consistently stated in their evidence that on the date of occurrence the accused had become Baya (insane) and went to village Goudaguda. D. W. 1 and Nidhi Gouda brought him to his house. Three months prior to the occurrence the accused had become Baya and was not able to identify persons. He was not brushing his teeth and was not taking bath. In cross-examination D. W. 1 stated that the accused was taking Salap juice and sometimes taking his food in the house. He was also taking food from the house of their relations whenever he was going there. The accused was a very lazy man doing no work. His father and mother used to chastise him and asked him to go out and work.

D. W. 2 stated that on the date of occurrence he had gone to village Chereka to bring Gunia to cure the accused of insanity. The accused was looking here and

there and was not able to identify persons. He was not able to know what he was doing. The villagers used to bring him to the house when he was going outside.

D. W. 3 deposed about her requesting Sukra and Laxman to sleep near the accused on the fateful night. The evidence of this witness was similar to that stated by the prosecution witnesses. She stated that the accused became Baya since two months prior to the occurrence. He was not taking rice but was taking paja (gruel).

9. From the evidence discussed above, it is amply clear that though there is no eyewitness to the occurrence, the circumstances clearly and unmistakably point to the possibility of the accused being solely responsible for the death of the two deceased persons. The accused and the deceased persons slept in one room which was locked from inside; during the night when the prosecution witnesses came to the house they found three of them inside the enclosed place where they were sleeping and Sukra lying dead with cut injuries and the accused standing near him holding the axe M.O.I.; when the accused opened the door the witnesses found the two deceased persons with severe cut injuries and the accused with the axe. Thus all the links in the chain of events pointing to the accused being responsible for the incident are established.

10. The question that remains to be considered is whether the action of the accused was intentional. In this connection the plea of insanity taken, by the accused is material. The plea of insanity if established will disprove that the accused had the intention to kill the deceased persons which is a necessary ingredient to establish the charge under Section 302, I.P.C.

Under Section 84, Penal Code it is not every mental derangement that exempts an accused person from criminal responsibility for his acts, but that derangement must be shown to be one which impairs the cognitive faculties of the accused, that is the faculty of understanding the nature of his act in its bearing on the victim or in relation to himself, that is his own responsibility for it. In medicine there are many kinds of insanity, but in law insanity is of two kinds - one which would exempt the person from criminal responsibility and the other which would not. There is a clear distinction between medical and legal insanity. Every type of insanity recognised in

medical science is not legal insanity. Every minor mental aberration is not insanity. There can be no legal insanity unless the cognitive faculty of mind is destroyed as a result of unsoundness of mind to such an extent as to render the offender incapable of knowing the nature of the act or that what he was doing was contrary to law. Courts are concerned with the legal and not with the medical view of the question. The Court before acquitting the accused has to record a finding that he was incapable of knowing the nature of the act he committed or knowing that he was doing that was either wrong or contrary to law.

11. The Supreme Court in the case of Ratan Lal v. State of Madhya Pradesh reported in : 1971 CriLJ654 laid down the principle that the crucial point of time at which unsoundness of mind has to be proved is the time when the crime is actually committed. The burden of proving this can be discharged by the accused from the circumstances which preceded, attended and followed the crime. Dealing with the question of appreciation of evidence relating to the plea of insanity, the Court observed that testimony of defence witnesses as to unsoundness of mind of the accused should not be, disbelieved merely because they are relations of the accused. It is the relations who are likely to remain in intimate contact of the accused, This decision. followed the principle laid down by the earlier decision of the Court in the case of Dahyabhai v. State of Gujarat : 1964 CriLJ472 .

In the case of Bhikari v. State of Uttar Pradesh : 1966 CriLJ63 , the Court considering the question of burden of proof observed that the burden of proving an offence is always on the prosecution; it never shifts. Intention, when it is an essential ingredient of an offence, has also to be established by the prosecution. But the state of mind of a person can ordinarily only be inferred from circumstances. For example, if -a person deliberately strikes another with a deadly weapon which according to the common experience of mankind is likely to cause an injury and sometimes even a fatal injury depending upon the nature of the weapon and the part of the body on which it is struck, it would be reasonable to infer that what the accused did was accompanied by the intention to cause a kind of injury which in fact' resulted from the act. In such a case the prosecution must be deemed to have discharged the burden resting upon it to establish an essential ingredient of the offence, namely the intention of the accused inflicting a blow with

a deadly weapon. The Court further observed that Section 84 of the Penal Code can be invoked by the accused for nullifying the evidence produced by the prosecution. This he can do by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. The prosecution need not establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. Every person is presumed to know that natural consequences of his act. Similarly every person is also presumed to know the law. The prosecution has not to establish these facts. It is for this reason that Section 105 of the Evidence Act places upon the accused person the burden of proving the exception relied upon by him.

In the case of Unniri Kannan v. State reported in : AIR1960 Ker24 , the circumstances were that the accused was subject to periodic epileptic fits from the childhood and symptoms of an impending epileptic seizure were seen on the day he killed his aged mother. The evidence showed that three weapons, namely, a bill-hook, a wooden reaper and a stick of fire-wood used in the attack, that the assault continued for some time, that the accused's reply to the deceased's plea not to kill his old mother was that she deserved something more than mere killing and that the accused made no attempt whatsoever either to conceal his crime or to escape from the scene. It was suggested that the accused's occasional quarrels with his mother over the quality of food which she served him constituted motive for the crime. The Court held that it would be purile to hold that an occasional quarrel over the quality of meals would motivate a mature man to hack to death his old and defenceless mother. The complete absence of motive or provocation, the nature and multiplicity of the weapons used, the duration of attack, the maniacal fury with which the attack was delivered and his subsequent conduct were all indications that the accused was acting under some insane impulse and therefore his act was saved by Section 84 from constituting the offence.

Recently a Division Bench of this Court in the case of Abhiram Kerketa v. State, Jail Criminal Appeal No. 368 of 1983 disposed of on 16th Nov., 1988, to which I was a party considered the question of plea of insanity. Following the principles

laid down by the Supreme Court in the case of Dahyabhai Chhaganbhai Thakkar v. State of Gujarat (supra) the plea of insanity taken by the accused was upheld in that case.

12. From the principles laid down and the observations made in the decided cases referred to above, the position is clear that while considering the plea of insanity under Section 84 of the Penal Code all the circumstances preceding, attending and succeeding the criminal act has to be taken into consideration. It will be futile and well-nigh impossible to lay down the circumstances which will be sufficient to establish the plea of insanity. It would depend on the facts and circumstances of each case. A set of circumstances in the facts of a case may be sufficient to establish the plea while the same set of circumstances in another case of different set of facts may not be sufficient for the purpose.

13. Coming to the circumstances that appear from the evidence discussed earlier, the accused was in the habit of drinking Salap juice, an intoxicant, at all hours of the day; he was doing no work and used to move about hither and thither, at times taking his food in his house and at times elsewhere; at times the accused was not able to recognise persons; on the date of the incident his father had gone to another village to fetch a Gunia (witch-doctor) to treat him (accused) for insanity; on the date of occurrence when the accused was going away from the village he was brought to the house and kept inside the room (enclosed portion of the varandah) and the two deceased persons were requested by his mother to sleep in the room to keep watch over him; when P. W. 1 reached the spot on hearing the groaning sound he found the electric light burning inside the room; the deceased Sukra lying seriously injured and the accused standing near him holding the axe; the accused made no attempt to escape from the spot and remained locked up in the room till the police officer called him out. The evidence in the case does not indicate any motive on the part of the accused to kill the two deceased persons.

On careful consideration of the evidence, I am of the view that the cumulative effect of the materials leads to the clear impression that the accused was suffering from unsoundness of mind at the time of committing the actions giving rise to the offence charged against him and that he did not have the cognitive faculty to

understand that what he was doing was wrong or was against the law. From the evidence on record the position is also clear that the prosecution has failed to discharge the general burden that the accused had the necessary mens rea for commission of the offence. Therefore the case is squarely covered by the principles laid down by the Supreme Court in the case Dahyabhai v. State of Gujarat 1964 (2) Cri LJ 472 (supra) and the accused is entitled to acquittal.

14. Accordingly the appeal is allowed and the appellant is acquitted of the charge under Section 302, Penal Code. Since there is no manner of doubt that the appellant committed the acts as alleged by the prosecution, the trial Court is directed to pass orders in accordance with Section 335, Criminal P.C.

**A.K. Padhi, J.**

15. 1 agree.

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